

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 645**

Introduced by Mello, 5; Haar, 21.

Read first time January 21, 2009

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to public contracts for services; to amend  
2 sections 73-501, 73-502, 73-504, 73-506, 73-507, and  
3 81-154.01, Reissue Revised Statutes of Nebraska; to  
4 change and eliminate provisions relating to certain  
5 contracts for services; to harmonize provisions; to  
6 repeal the original sections; and to outright repeal  
7 sections 73-301, 73-302, 73-303, 73-304, 73-305, 73-306,  
8 73-307, and 73-509, Reissue Revised Statutes of Nebraska.  
9 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 73-501, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           73-501 The purposes of sections 73-501 to ~~73-509~~ 73-508  
4 and sections 6 to 8 of this act are to establish a standardized,  
5 open, and fair process for selection of contractual services  
6 and to create an accurate reporting of expended funds for  
7 contractual services. This process shall promote a standardized  
8 method of selection for state contracts for services, assuring  
9 a fair assessment of qualifications and capabilities for project  
10 completion. There shall also be an accountable, efficient reporting  
11 method of expenditures for these services.

12          Sec. 2. Section 73-502, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14          73-502 For purposes of sections 73-501 to ~~73-509~~ 73-508  
15 and sections 6 to 8 of this act:

16           (1) Contract for services means any contract that  
17 directly engages the time or effort of an independent contractor  
18 whose purpose is to perform an identifiable task, study, or report  
19 rather than to furnish an end item of supply, goods, equipment,  
20 or material;

21           (2) Displaced employee means, on the effective date of  
22 the proposed contract, the job functions of a permanent state  
23 employee covered by the classified personnel system or any labor  
24 contract would be replaced by such contract;

25          ~~(2)~~ (3) Emergency means necessary to meet an urgent or

1 unexpected requirement or when health and public safety or the  
2 conservation of public resources is at risk;

3 ~~(3)~~ (4) Materiel division means the materiel division of  
4 the Department of Administrative Services established in section  
5 81-1118;

6 (5) Occasional means a service that is seasonal,  
7 irregular, or fluctuating in nature;

8 ~~(4)~~ (6) Sole source means of such a unique nature  
9 that the contractor selected is clearly and justifiably the only  
10 practicable source to provide the service. Determination that the  
11 contractor selected is justifiably the sole source is based on  
12 either the uniqueness of the service or sole availability at the  
13 location required; and

14 ~~(5)~~ (7) State agency or agency means any state agency,  
15 board, or commission other than the University of Nebraska, the  
16 Nebraska state colleges, the courts, the Legislature, or any  
17 officer or agency established by the Constitution of Nebraska;

18 (8) Temporary means a contract for services that meets a  
19 need for a specific task or result for a finite period of time; and

20 (9) Urgent means a compelling need for immediate action  
21 to protect the health, welfare, or safety of people or property or  
22 to meet an externally imposed deadline beyond the state agency's  
23 control.

24 Sec. 3. Section 73-504, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

1           73-504 Except as provided in section 73-507:

2           (1) All state agencies shall comply with the review  
3 and competitive bidding processes provided in this section for  
4 contracts for services. Unless otherwise exempt, no state agency  
5 shall expend funds for contracts for services without complying  
6 with this section;

7           (2) All proposed state agency contracts for services  
8 in excess of fifty thousand dollars shall be bid in the manner  
9 prescribed by the materiel division procurement manual or a process  
10 approved by the Director of Administrative Services. Bidding may be  
11 performed at the state agency level or by the materiel division.  
12 Any state agency may request that the materiel division conduct the  
13 competitive bidding process;

14           (3) If the bidding process is at the state agency level,  
15 then state agency directors shall ensure that bid documents for  
16 each contract for services in excess of fifty thousand dollars  
17 are prereviewed by the materiel division and that any changes  
18 to the proposed contract that differ from the bid documents in  
19 the proposed contract for services are reviewed by the materiel  
20 division before signature by the parties;

21           (4) State agency directors, in cooperation with the  
22 materiel division, shall be responsible for appropriate public  
23 notice of an impending contractual services project in excess of  
24 fifty thousand dollars in accordance with the materiel division's  
25 procurement manual and sections 73-501 to ~~73-509~~, 73-508 and

1 sections 6 to 8 of this act; and

2 (5) State agency directors, in cooperation with the  
3 materiel division, shall be responsible for ensuring that a request  
4 for contractual services in excess of fifty thousand dollars  
5 is filed with the materiel division for dissemination or web  
6 site access to vendors interested in competing for contracts for  
7 services.

8 Sec. 4. Section 73-506, Reissue Revised Statutes of  
9 Nebraska, is amended to read:

10 73-506 State agency contracts for services shall be  
11 subject to the following requirements:

12 (1) Payments shall be made when contractual deliverables  
13 are received or in accordance with specific contractual terms and  
14 conditions;

15 (2) State agencies may not enter into contracts for  
16 services with an unspecified or unlimited duration; and

17 (3) State agencies may not structure contracts for  
18 services to avoid any of the requirements of sections 73-501  
19 to ~~73-509~~, 73-508 and sections 6 to 8 of this act.

20 Sec. 5. Section 73-507, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22 73-507 (1) Subject to review by the Director of  
23 Administrative Services, the materiel division shall provide  
24 procedures to grant limited exceptions from the provisions of  
25 sections 73-504, and 73-508, ~~and 73-509~~ for:

1           (a) Sole source and emergency contracts; and  
2           (b) Other circumstances or specific contracts when any  
3 of the requirements of sections 73-504~~7~~ and 73-508~~7~~ and 73-509 are  
4 not appropriate for or are not compatible with the circumstances or  
5 contract. The materiel division shall provide a written rationale  
6 which shall be kept on file when granting an exception under this  
7 subdivision.

8           (2) The following types of contracts for services are not  
9 subject to sections 73-504~~7~~ and 73-508: 7 and 73-509~~+~~

10           (a) Contracts for services subject to the Nebraska  
11 Consultants' Competitive Negotiation Act;

12           (b) Contracts for services subject to federal law,  
13 regulation, or policy or state statute, under which a state  
14 agency is required to use a different selection process or to  
15 contract with an identified contractor or type of contractor;

16           (c) Contracts for professional legal services and  
17 services of expert witnesses, hearing officers, or administrative  
18 law judges retained by state agencies for administrative or court  
19 proceedings;

20           (d) Contracts involving state or federal financial  
21 assistance passed through by a state agency to a political  
22 subdivision;

23           (e) Contracts with direct providers of medical,  
24 behavioral, or developmental health services, child care, or child  
25 welfare services to an individual;

1 (f) Agreements for services to be performed for a state  
2 agency by another state or local government agency or contracts  
3 made by a state agency with a local government agency for the  
4 direct provision of services to the public;

5 (g) Agreements for services between a state agency and  
6 the University of Nebraska, the Nebraska state colleges, the  
7 courts, the Legislature, or other officers or agencies established  
8 by the Constitution of Nebraska;

9 (h) Department of Insurance contracts for financial  
10 or actuarial examination, for rehabilitation, conservation,  
11 reorganization, or liquidation of licensees, and for professional  
12 services related to residual pools or excess funds under the  
13 agency's control;

14 (i) Department of Roads contracts for all road and bridge  
15 projects; and

16 (j) Nebraska Investment Council contracts.

17 Sec. 6. Prior to entering into a proposed contract for  
18 services in excess of fifty thousand dollars, a state agency shall  
19 complete a cost-benefit analysis between using state employees to  
20 perform the services and the proposed contract for services using,  
21 as a minimum, the guidelines described in section 7 of this act.  
22 This section applies if the services proposed in the contract are  
23 being performed or have been performed by a state employee covered  
24 by the classified personnel system or by any labor contract within  
25 the twelve months immediately preceding the proposed effective date

1 of the proposed contract, or the services are required for new  
2 programs that were not in existence within the previous twelve  
3 months. A copy of the cost-benefit analysis shall be filed with  
4 the Legislative Fiscal Analyst within ten business days after  
5 completion if state employees will continue to perform the services  
6 or within ten business days after the agency awards a contract for  
7 services. A state agency is not required to prepare and submit a  
8 cost-benefit analysis on the exceptions listed in section 73-507.

9           Sec. 7. The materiel division shall develop guidelines  
10 for state agencies to use in conducting a cost-benefit analysis  
11 under section 6 of this act. The guidelines, at a minimum, shall  
12 require state agencies to provide the following information:

13           (1) A statement of the service;

14           (2) The reason for purchasing the service instead of  
15 using or hiring state employees, including, but not limited to,  
16 whether there is an administrative restriction on hiring additional  
17 state employes;

18           (3) A review of the long-term actual cost savings;

19           (4) A description of the costs and an explanation of  
20 the method by which the state agency will include adequate control  
21 mechanisms to insure that the services are provided pursuant to the  
22 terms of the contract, including a description of how the state  
23 agency will assure the level and quality of services provided;

24           (5) Identification of the specific agency employees who  
25 will be monitoring the contract for services for performance;



1           (6) Identification of whether the service requested is  
2 temporary, urgent, or occasional in nature and the reason the  
3 proposed service meets one of these criteria;

4           (7) A statement of whether or not the proposed contract  
5 adversely affects the state's affirmative action efforts;

6           (8) An assessment of the feasibility of alternatives  
7 within the agency to contracting for performance of the service;

8           (9) A justification for entering into the contract for  
9 services if:

10           (a) The proposed contract will not result in a  
11 cost-benefit to the state; and

12           (b) The public's interest in having the particular  
13 services performed directly by the state agency outweighs entering  
14 into the proposed contract by the state agency;

15           (10) A projection of the state agency's cost savings for  
16 twelve months and for sixty months, including, but not limited to:

17           (a) Direct costs, including salary and fringe benefits;

18           (b) Indirect overhead costs which shall include only  
19 those costs that can be attributed solely to the work in question  
20 and that would not exist if the work were not performed by state  
21 employees. Indirect overhead costs shall include the pro rata share  
22 of existing administrative salaries and benefits, rents, equipment  
23 costs, utilities, and materials;

24           (c) Any continuing or transitional costs that are  
25 directly associated with contracting for the service, including

1 unemployment compensation and the cost of transitional services;  
2 and

3 (d) Additional costs of performance of the services by  
4 state employees, including the salaries and benefits of additional  
5 staff performing inspection, supervision, and monitoring duties and  
6 the cost of additional space, equipment, and materials needed to  
7 perform the services; and

8 (11) A formal plan of assistance for any displaced state  
9 employee of the state agency. The plan shall include, but not be  
10 limited to:

11 (a) Efforts by the state agency to place displaced  
12 employees in vacant positions in that state agency or another state  
13 agency; and

14 (b) Demonstration by the state agency that it has taken  
15 formal and positive steps in considering alternatives to such  
16 contract, including reorganization, reevaluation of service, and  
17 reevaluation of performance.

18 Sec. 8. The Department of Administrative Services shall  
19 adopt and promulgate rules and regulations to carry out the duties  
20 and requirements under sections 73-501 to 73-508 and sections 6 to  
21 8 of this act.

22 Sec. 9. Section 81-154.01, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24 81-154.01 The materiel division shall make available  
25 copies of current purchase agreements and standard specifications

1 to the University of Nebraska. The University of Nebraska may  
2 utilize such purchase agreements if it determines that it would  
3 be to its advantage to do so. The materiel division may utilize  
4 purchase agreements entered into by the University of Nebraska  
5 upon a finding by the materiel administrator that the use of  
6 such agreements would be in the best interests of the state.  
7 ~~For purposes of this section, purchase agreements do not include~~  
8 ~~contracts for personal services subject to sections 73-301 to~~  
9 ~~73-307.~~

10           Sec. 10. Original sections 73-501, 73-502, 73-504,  
11 73-506, 73-507, and 81-154.01, Reissue Revised Statutes of  
12 Nebraska, are repealed.

13           Sec. 11. The following sections are outright repealed:  
14 Sections 73-301, 73-302, 73-303, 73-304, 73-305, 73-306, 73-307,  
15 and 73-509, Reissue Revised Statutes of Nebraska.